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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/500,392

06/28/2004

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EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1761

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/500,392	<b>Applicant(s)</b> MICHEV, GEORGI ASENOV	
	<b>Examiner</b> Vera Stulii	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-12 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7-12 and 14-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/23/05</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-5, 7-12, and 14-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 3-5, 7-12, and 14-23 do not recite active method steps.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

In regard to claim 3 and 4, it is not clear how the beverage is exactly "conditioned" "in accordance with consumer's taste".

Regarding claim 7, the phrase "very close" and "standard" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "very close" and "standard"), thereby rendering the scope of the claim(s) unascertainable.

Claim 7 recites the limitation "the plug head" in line 11. There is insufficient antecedent basis for this limitation in the claim.

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Claims 9-12 and 20-23 recite structural limitation that do not further limit the method steps.

**NOTE:** It appears that claims 8-12 were originally drawn to a device associated with a claimed method. Newly added claims 20-23 are similar to amended claims 8-12. It is suggested that applicant submits separate set of claims drawn to a recited device.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 3-5, 7-8, and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitterly (DE 4422190) in view of Ribereau-Gayon et al (HANDBOOK OF ENOLOGY).**

In regard to claim 1, 14, and 17 Sitterly discloses a method for production of sparkling alcoholic beverages such as champagnes and sparkling wine in the air-tight

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space container. Sitterly also discloses that fermentation, stabilization, and filtration are carried out in the same air-tight container comprising a plug and sealing means. Sitterly also discloses that beverage may be dispensed using separate dispensing device, and therefore discloses that the beverage is kept in the container until consumption. It is noted that filtration is apart of stabilization process, and therefore filtration and stabilization are performed simultaneously. Sitterly discloses "shifting" of carbon dioxide.

Sitterly does not disclose the constant pressure in the air-tight container. Since constant pressure is an important measure in a sparkling alcoholic beverages production, one of the ordinary skill in the art would have been motivated to use "shifting" of carbon dioxide as disclosed by Sitterly in order to keep constant pressure.

In regard to claims 3-4 and 15-16, it is noted that it is traditional in sparkling beverages production to add so called final dosage (*liqueur d'expedition*) to adjust the sugar concentration of champagne(as evidenced by Ribereau-Gayon et al, p. 424).

In regard to claims 5, it is noted that the base mix for champagne and sparkling beverages is prepared by mixing sugar and yeast solution with blend of wines and further immobilizing yeast (As evidenced by Ribereau-Gayon et al, pp.421-422).

In regard to claims 7 and 18, Sitterly discloses that the air-tight container has a cylindrical body that has an axis, a spherical upper end and a spherical lower end and its inner surface is suitable for contact with foodstuffs. Sitterly also discloses that the upper end of the air-tight container has an opening. Sitterly also discloses that air-tight container has a filtering element.

In regard to claim 8 and 19, it is noted that Sitterly discloses filtering during preparation of sparkling beverages in the air-tight container as instantly claimed. Even though Sitterly does not specify particular pore size of the filter, one of the ordinary skill in the art would expect to employ the same filter as claimed, since Sitterly discloses the same raw materials, the same final product, similar air-tight container and the same method steps.

**Claims 9-12 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sitterly (DE 4422190) in view of Ribereau-Gayon et al (HANDBOOK OF ENOLOGY) and Johnston (US 3,438,553).**

Sitterly does not disclose particular structural components of air-tight container.

It is noted that structural limitations as claimed are close to the structure of beer kegs. Johnston discloses a device for drawing liquids such as beer from beer kegs using gas to drive the fluid from the container. The device comprising an adapter semi-permanently installed in the keg, containing a gas check valve (Abstract, Fig. 1). Thus in regard to claims 9 and 20, Johnston discloses multifunctional plug head is connected to a monitoring and controlling device.

In regard to claims 10 and 21, Johnston discloses that the container is connected via valve 28 to a gas supply tank 30 (Col. 4 lines 38-39, Fig. 1).

In regard to claims 11 and 22, Johnston discloses that plug head is connected to the outlet of fermentation tank (Fig. 1)

In regard to claims 12 and 23, Johnston discloses cylindrical shape of the container.

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Since Sitterly discloses a method for production of sparkling alcoholic beverages such as champagnes and sparkling wine in the air-tight space container where beverage may be dispensed using separate dispensing device, one of the ordinary skill in the art would have been motivated to modify disclosure of Sitterly and employ dispensing device as taught by Johnston. One of the ordinary skill in the art would have been motivated to do so, since both Johnston and Sitterly teach carbonated beverages in air-tight sealed container and its dispensing. Particular shape of the container's wall would not serve as a patentable feature over the prior art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Vera Stulii

*V. Stulii*

*[Signature]*  
SP6-1761